



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

DECISION

MRA-40/57595

PRELIMINARY RECITALS

Pursuant to a petition filed April 9, 2003, under Wis. Stat. §49.45(5), to review a decision by the Milwaukee County Dept. of Human Services in regard to Medical Assistance (MA), a hearing was held on May 14, 2003, at Milwaukee, Wisconsin.

The issue for determination is whether monthly annuity payments must be considered income in their entirety.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

(petitioner)

Wisconsin Department of Health and Family Services
Division of Health Care Financing
1 West Wilson Street, Room 250
P.O. Box 309
Madison, WI 53707-0309

By: Stefe Proctor, ESS
Milwaukee County Dept. Of Human Services
907 N. 10th Street
Milwaukee, WI 53233

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is a nursing home resident of Milwaukee County.
2. Petitioner's wife is a community spouse under Spousal Impoverishment rules. In early 2003 she sold her home, which was titled in her name only, and she used the proceeds plus some other funds to purchase an annuity from North American Company for Life and Health Insurance. The annuity pays \$904.81 monthly.

3. Petitioner's wife reported the change, and the county reviewed petitioner's MA eligibility. Prior to the change, petitioner allocated substantial amounts of his income to his wife. The county entered the entire \$904.81 as unearned income for petitioner's wife. Because of that income, she did not need as much of petitioner's income to bring her to the community spouse income allocation.
4. By a notice dated April 18, 2003, the county informed petitioner that his monthly nursing home cost of care would increase from \$216.03 to \$1,120.84, effective May 1, 2003. The change was not implemented pending this decision.

DISCUSSION

The issue raised in this case is whether the county correctly budgeted the entire \$904.81 as petitioner's wife's income, or whether only the portion of the annuity attributable to interest should have been budgeted. Petitioner presented documentation from the insurance company that \$707.56 of the monthly annuity payment is excluded from income for tax purposes.

None of the state's MA resources specifically mention the treatment of annuities as income. The Wisconsin Statutes, the Wisconsin Administrative Code, and the MA Handbook are silent.

Wis. Adm. Code, §HFS 103.075(6)(b)1, provides that the community spouse's income shall be determined as provided under Wis. Stat., §49.47(4)(c). Wis. Stat., §49.47(4)(c)1 provides that "income" includes unearned income that would be included in determining eligibility for the aged, blind, or disabled under 42 USC 1381 to 1385. Those federal laws pertain to the Supplemental Security Income (SSI) program. 42 USC 1382a(a)(2)(B) provides that unearned income includes "any payments received as an annuity...." 42 USC 1382a(b), which provides exclusions from income, does not mention returns of investment or nontaxable portions of annuity payments. This treatment is echoed in the Social Security Administration's Program Operation Manual System (POMS), §SI 00830.160.

Based on the unambiguous language of the state and federal authorities, I conclude that the county correctly budgeted the entire monthly annuity payment made to petitioner's wife as unearned income to her. The county thus correctly increased petitioner's monthly cost of care liability.

CONCLUSIONS OF LAW

The entire monthly annuity payment to petitioner's wife must be counted as unearned income to her.

NOW, THEREFORE, it is **ORDERED**

That the petition for review herein be and the same is hereby dismissed.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one). The appeal must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of
Madison, Wisconsin, this 20th day of
May, 2003

/s/Brian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals
0516/bcs